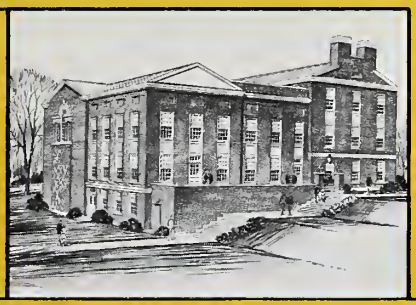

Wake Forest Jurist

VOL. 2, NO. 2 WINSTON-SALEM, N. C. SPRING, 1972

FREEDOM OF SPEECH

LAW DAY 1972 APRIL 28-29

WAKE FOREST JURIST

Vol. 2 No. 2 Spring, 1972

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PHOTO CREDITS

John L. Pinnix McNabb Studio

STATEMENT OF POLICY

The Wake Forest Jurist is published by the Wake Forest School of Law in co-operation with the Student Bar Association and is mailed free of charge to Alumni of the School of Law. One of the primary functions of the Jurist is to provide a meaningful link between the School of Law and its alumni. Opinions expressed and positions advocated herein are those of the authors and do not represent official policy of the School of Law.

The cover design for this issue is by C. Roland Krueger and John P. Simpson. A collage of photographs emphasizing the theme of the Law Day programs displays various aspects of freedom of speech in the U.S., U.S.S.R., and China.

WAKE FOREST UNIVERSITY SCHOOL OF LAW
Box 7206 Reynolda Station
Winston-Salem, North Carolina 27109
(919) - 725-9711

Office of the Dean

April 1, 1972

To All Law Day Conference Participants:

It is a great pleasure to welcome visitors from other law schools and our alumni to this Law Day Conference. The topic of the Conference is a timely one, particularly in view of President Nixon's recent journey to mainland China. The panelists for the Conference are some of the most knowledgeable and provocative scholars in their particular fields in the non-communist world; they have been carefully selected not only for their scholarship but also for their ability to generate intellectual excitement. The Conference promises, therefore, to be a lively and stimulating one.

We are grateful to the American Bar Association's Standing Committee on Education About Communism and its Contrast With Liberty Under Law for having selected Wake Forest as the situs of this Conference, and for the Committee's splendid assistance and cooperation in arranging and financing the Conference. Our special thanks go to Admiral William C. Mott, the Chairman of the Committee, and to Colonel James M. Spiro, a member of the Committee and our primary liaison with the ABA, for their unflagging support and vigorous leadership.

I also want to congratulate the Wake Forest Student Bar Association for its splendid work in planning and making the physical preparations for the Conference. Particular recognition should go to Messrs. Randy Gregory and Floyd Dickinson, who have served as Co-chairmen of the Law Day Committee.

All of us here at Wake Forest hope that each of you attending the Conference will have a pleasant and rewarding experience. If there is anything we can do to make your stay in Winston-Salem more enjoyable, please let us know and we shall see that it is done. We are delighted to have you with us on this occasion.

Sincerely,

Pasco Bowman

Pasco M. Bowman
Dean

PMB/m

STATE OF NORTH CAROLINA
DEPARTMENT OF JUSTICE
RALEIGH 27602

ROBERT MORGAN
ATTORNEY GENERAL

March 8, 1972

Student Bar Association
School of Law
Wake Forest University
Winston-Salem, North Carolina 27109

Dear S.B.A. Members:

Today I received your letter concerning the conference on "Freedom of Speech: It's Use and Abuse in the United States and the Communist Countries" to be held in late April. I wanted to write immediately and let you know how pleased I am that the Wake Forest University School of Law has been selected to host this conference.

I do not remember the law school ever having served as host to a more distinguished group of visitors than the participants in this conference. In my opinion, this conference marks a milestone in the history of growth and service to the Bar by the law school.

It seems particularly fitting that this conference concerning freedom of speech be held in conjunction with Law Day. The law plays many roles in our society. Ordinarily it is conceived of as functioning to resolve disputes between individuals and to regulate their conduct. Yet it performs another, perhaps more basic function. It acts as a guardian of democracy. Freedom of speech, and the other first amendment rights, the very cornerstones of democracy, have come under attack. Some would seek to limit their scope. Others would seek to abuse these freedoms. A resolution of these conflicts through law conforming with the principles of democracy is needed. As Law Day draws near, it is certainly appropriate that this conference focus our attention on these problems.

Sincerely yours,

Robert Morgan
Attorney General

RM:ec

LAW DAY 1972

April 28 - 29

THEME: "FREEDOM OF SPEECH: ITS USE AND ABUSE IN THE UNITED STATES AND THE COMMUNIST COUNTRIES."

This year the Law Day program will be co-sponsored by the Student Bar Association and the American Bar Association's Standing Committee on Education About Communism. Wake Forest Law School is indeed fortunate to be selected by the Committe as the local sponsoring school. The entire program has been organized and planned by our Law School.

It will be held at the Holiday Inn West, off Silas Creek Parkway South, and at the Hilton Inn in downtown Winston-Salem. Law student delegations have been invited from each of the law schools in North Carolina, South Carolina, Virginia, Tennessee, and Georgia; all expenses are covered by the ABA. Also, all local law students, alumni of Wake Forest Law School, members of the North Carolina Bar Association and the Forsyth County Bar Association, ABA members of the Standing Committee, and special guests have been invited. If you wish to attend, see the returnable coupon on the last page of the Law Day section.

The ABA officially recognized the need for a program of education about communism when it created a Special Committee on Communist Tactics, Strategy and Objectives in 1950. To provide for a more effective program, the Standing Committee was established in 1962. One of its fundamental purposes is to encourage and support adequate instruction in schools and colleges throughout the nation contrasting the democratic and communist forms of government.

"We believe that the best way to teach the positive values inherent in a free society is to contrast the rights guaranteed in such a society with those permitted under totalitarian governments," said Admiral William C. Mott, Chairman of the Committee. "To counteract the influence of 'alarmist' groups which launch emotional tirades against communism without rational analysis, the Committee consults top educators, sponsors first-rate objective scholarship, and maintains high standards for materials it publishes."

Members of the Committee are Rear Admiral William C. Mott, Chairman, Washington, D.C.; Raymond Coward of Arlington, Tex.; Edward R. Finch of New York City; Victor C. Folson of Green Valley, Az.; Richard C. Ham of San Francisco; Jack E. Herington of Washington, D.C.; John G. McKay, Jr. of Miami, Fla.; Robert H. Parsley of Houston, Tex.; Bernard A. Ramundo of Washington, D.C.; James M. Spiro and Horace A. Young, both of Chicago; and Robert Milligan of Washington, D.C.

LAW DAY CONFERENCE

Schedule of Events

Theme: "Freedom of Speech: Its Use and Abuse In the U.S. and the Communist Countries."

FRIDAY, APRIL 28, 1972

10:00 - 12:00	*REGISTRATION,* Holiday Inn West
12:00 - 1:45	*LUNCHEON,* Holiday Inn West; for everyone
12:00 - 1:15	*Lunch*
1:15 - 1:20	*Welcome* - Dean Pasco Bowman
1:20 - 1:30	*Opening Remarks* - Rear Admiral William C. Mott
1:30 - 1:45	*BREAK*
1:45 - 3:30	*FIRST PRESENTATION* — The U.S. in relation to the Conference theme *Moderator:* Admiral William C. Mott
1:45 - 2:30	*Presentation* - Thomas I. Emerson
2:30 - 2:40	*Commentary* - Bonaro Overstreet
2:40 - 2:50	*Commentary* - Walt Dellinger
2:50 - 3:30	*Questions and Answers*
3:30 - 3:45	*COFFEE BREAK*
3:45 - 5:30	*SECOND PRESENTATION* — The Soviet Union in relation to the Conference theme *Moderator:* Lowell R. Tillet
3:45 - 4:30	*Presentation* - Leonid Vladimirov
4:30 - 4:40	*Commentary* - Kazimierz Grzybowski
4:40 - 4:50	*Commentary* - Bernard Ramundo
4:50 - 5:30	*Questions and Answers*
5:30 - 8:00	*DINNER* — ABA members, visiting scholars--Holiday Inn West Visiting law school delegates--Mr. T's Restaurant
8:00 - 10:30	*COCKTAILS* at Wake Forest Alumni House for ABA members, visiting scholars and law school delegates

SATURDAY, APRIL 29, 1972

8:15 - 9:00	*BREAKFAST,* Holiday Inn West; for ABA members, visiting scholars and law schools delegates.
9:00 - 10:45	*THIRD PRESENTATION* – The Democratic Peoples Republic of China in relation to the Conference theme
	Moderator: Dean Pasco Bowman
9:00 - 9:45	*Presentation* - Victor Li
9:45 - 9:55	*Commentary* - Ralph Powell
9:55 - 10:05	*Commentary* - Franz Michael
10:05 - 10:45	*Questions and Answers*
10:45 - 11:00	*COFFEE BREAK*
11:00 - 12:15	*FOURTH PRESENTATION* – Vietnam and Southeast Asia in relation to the Conference theme
	Moderator: Professor Henry Lauerman
	Presentation - Dolfe Droge
	Questions and Answers
12:15 - 12:30	*CLOSING REMARKS*
12:15 - 12:20	Admiral William C. Mott
12:20 - 12:25	Dean Pasco Bowman
12:25 - 12:30	*ANNOUNCEMENTS AND INFORMATION*
12:30 - 2:00	*LUNCHEON BUFFET,* Holiday Inn West; for ABA members, visiting scholars and law school delegates
2:30 - 5:00	*COCKTAILS,* Holiday Inn West; for ABA members, visiting scholars and law school delegates
2:30 - 5:30	*HAPPY HOUR,* local Schlitz brewery; for everyone.
6:30 - 12:00	*LAW DAY BANQUET,* Statler-Hilton Inn; for everyone.
6:30 - 7:00	*Greetings*
7:00 - 8:00	*Dinner*
8:00 - 8:25	*S.B.A. Program and Awards*
8:25 - 8:30	*Introduction of Sir Leslie Munro*
8:30 - 9:10	*Address* – Sir Leslie Munro
9:10 - 12:00	*Dance*

THE PARTICIPATING SCHOLARS

PRINCIPAL SPEAKERS:

Thomas I. Emerson

Born in 1907, Professor Emerson has been at Yale Law School since 1946. He received the A.B. (1928) and LL.B. (1931) from Yale, serving as Editor-in-Chief of the Yale Law Journal. Admitted to the New York Bar Association in 1932, he entered private practice and served in various legal positions in the federal government until 1946. A recipient of Guggenheim (1953-54) and Ford (1960-69) Fellowships, his publications include *Toward a General Theory of the First Amendment; Political and Civil Rights in the United States,* and *The System of Freedom of Expression.*

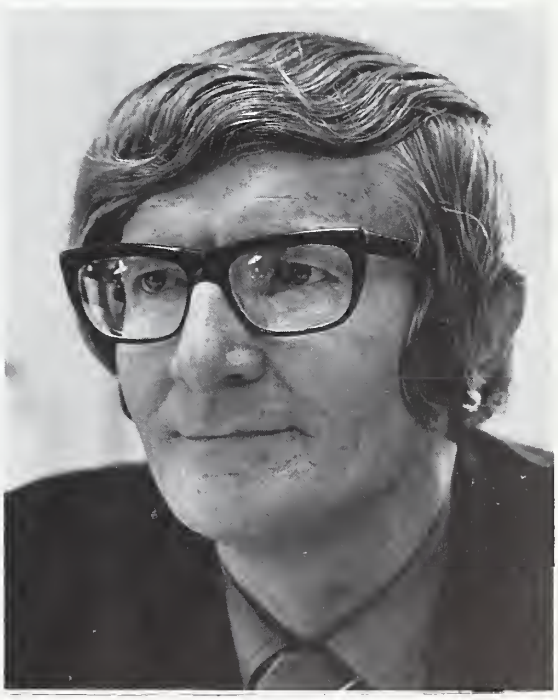
Mr. Vladimirov, a Russian journalist and novelist, was in London in 1966 when he announced his decision to remain in the West. In Moscow, he was a writer for *Pravda, Izvestia, Literaturnaya Gazeta* and other publications. Since 1966, he has written two books, *The Russians* and *The Russian Space Bluff.*

Leonid Vladimirov

Victor Li

Born in China in 1941, Dr. Li came to the United States in 1947. He received his undergraduate and law school training at Columbia University. He received LL.M. and S.J.D. degrees from Harvard Law School. He is a member of the New York Bar. Dr. Li has served as Visiting Assistant Professor of Law at Michigan Law School, Assistant Professor of Law at Columbia University and is presently Associate Professor of Law at Stanford Law School.

His present address being The National Security Council, The White House, Mr. Droge is one of President Nixon's chief aides. Born in Milan, Indiana, in 1928, he received his Bachelor's Degree (Political Science) from Wittenburg College. During the Korean War he was for 31 months a reporter and information specialist in the Far East. He was a newsman for an NBC-TV affiliate in the Midwest in 1955, and later joined the USIA, serving in Eastern Europe, Thailand, Laos, and Vietnam as Chief of the Vietnamese Broadcast Division of the Voice of America. He was assigned to the White House in 1968.



Dolfe Droge

COMMENTATORS:

Bonaro Overstreet

Mrs. Overstreet, a noted teacher, lecturer and author, received her B.A. degree from the University of California in 1925. She has been deeply involved in adult education and mental health movements, teaching and lecturing for a host of educational, governmental and community organizations throughout the nation and abroad. Among her publications are *Freedom's People, Courage for Crisis,* and in the field of poetry. *Hands Laid Upon the Wind.* She is co-author with Harry A. Overstreet of *What We Must Know About Communism, The Iron Curtain, The Strange Tactics of Extremism.*

Professor Dellinger earned his A.B. degree at the University of North Carolina and his LL.B. at Yale Law School. He was in private practice in Atlanta, Georgia before becoming an Associate Professor of Law at the University of Mississippi. From 1968-69 he served as law clerk to Justice Hugo Black, U.S. Supreme Court. Since 1969, he has been an Associate Professor at Duke University, teaching Civil Procedure and Constitutional Law.

Walter Dellinger

Kazimierz Grzybowski

Presently serving as Professor of Law and Political Science at Duke University, Dr. Grzybowski is a native of Poland. He received the MLL (1931) and Doctor of Law and Political Science (1934) degrees from the University of Lwow, and the S.J.D. (1933) from Harvard Law School. Entering the Polish bar in 1936, he became Associate Professor of the University of Lwow Law School. After directing the Polish Information Center for the Middle East (1942-45), Dr. Grzybowski served as editor of the European Law Division of the Library of Congress (1951-60). Since 1962, he has been a Senior Research Associate of the Rule of Law Research Center. Among his numerous publications are *Soviet Legal Implication; Their Doctrines and Social Implications, Soviet Private International Law, and Soviet Public International Law: Doctrines and Diplomatic Practice.*

In addition to Duke Law School, he has taught at Michigan, Yale, New York University, the University of Leiden, the University of Strassbourg, and the University of Paris.

Dr. Ramundo did his undergraduate work at City College of New York. He earned a Ph.D. in International Relations from American University and a certificate from the Russian Institute at Columbia University. From Columbia University he holds a J.D. degree and an A.M. in Public Law. He is now a professorial lecturer at George Washington University Law School. Among his publications are *The Soviet* (Socialist) *Theory of International Law; Peaceful Coexistence: International Law in the Building of Communism;* and *The Soviet Legal System - A Primer.*

Bernard Ramundo

Franz Michael

Born in Freiburg, Germany in 1907, Professor Michael earned his diploma from Berlin University and his law degree from Freiburg. From 1942-1964 he served as Professor of History and Government at the University of Washington at Seattle. Since 1964 he has been a Professor of International Affairs and Associate Director of the Institute of Sino-Soviet Studies, George Washington University, Washington, D.C. Among Professor Michael's publications are *The Origin of Manchu Rule in China, The Far East and the Modern World, The Taiping Rebellion.*

Dr. Powell received his B.A. from the University of California and his M.A. and Ph.D. degrees from Harvard University where he was a John Harvard Fellow. He has taught Far Eastern History at Princeton University and the National War College and has served as visiting professor of the School of International Service. He has been a member of various research and study groups as well as serving as a member of the Advisory Panel on China of the Department of State from 1966-69. Dr. Powell is currently Professor of Far Eastern Studies, School of International Service, American University, Washington, D.C. Dr. Powell is the author of *The Rise of Chinese Military Power, 1895-1912; Politico-Military Relationships in Communist China.* He has contributed numerous articles to symposia and to professional journals.

Ralph Powell

MODERATORS:

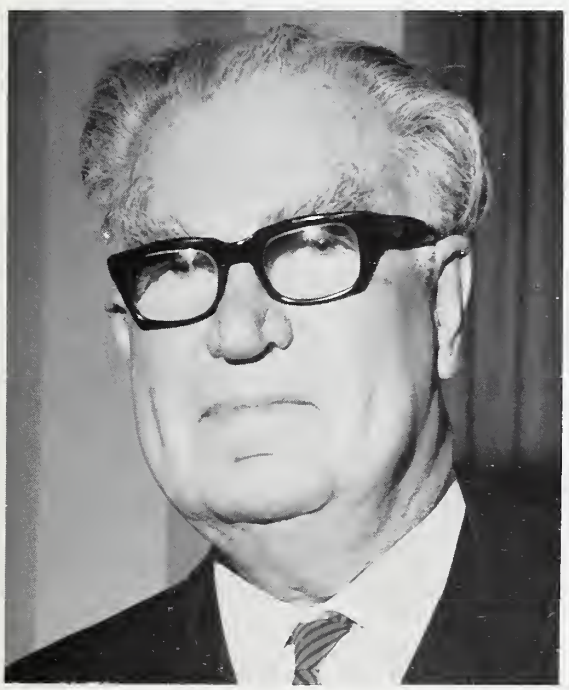
William C. Mott--Chairman, ABA Standing Committee on Education About Communism. Mr. Mott is retired Rear Admiral and former Judge Advocate General of the Navy. He served as Assistant Naval aide to Presidents Roosevelt and Truman, and represented the United States in negotiations with the communists at many international conferences.

Pasco M. Bowman--Dean, Wake Forest University School of Law. Dean Bowman received his J.D. degree in 1958 from New York University and served as Managing Editor of the Law Review while attending. In 1961-62 he was a Fulbright Scholar to the London School of Economics. He was admitted to the New York Bar in 1958, and to the Georgia Bar in 1965. He is a member of the ABA Sections of Corporation, Banking, and Business Law, and Antitrust Law.

Henry C. Lauerman--Professor, Wake Forest School of Law. Professor Lauerman received his B.S. degree in 1938 from the U.S. Naval Academy; his LL.M. in 1957 from Georgetown, and his LL.M. from Duke in 1962. While at Georgetown he served as Editor-in-Chief of the Georgetown Law Journal. He was admitted to the District of Columbia Bar in 1948. He served in the U.S. Navy from 1938 - 1962.

Lowell R. Tillet--Professor of History, Wake Forest University. Dr. Tillet received his B.A. degree from Carson-Newman College; his M.A. from Columbia University; his Ph.D. from the University of North Carolina at Chapel Hill. He is the author of *The Great Friendship: Soviet Historians on the Non--Russian Nationalities,* a book telling how Soviet historians have rewritten versions of their country's history.

BANQUET SPEAKER:



Sir Leslie Munro

Born in Auckland, New Zealand in 1901, Sir Leslie Munro became Dean of the Law Faculty at Auckland University College in 1938. Later he became editor of the New Zealand Herald (1942051) and was New Zealand Ambassador to the United States (1952-58). After serving as New Zealand's representative to the United Nations Security Council (1954-55) he was named president of the General Assembly in 1957. He has been in the New Zealand parliament since 1963, and is presently a member for Hamilton West. He holds honorary LL.B.'s from eight institutions, including Harvard, Michigan, and Birmingham (England).

S.B.A. LAW DAY BANQUET

The Student Bar Association will observe its twentieth annual Law Day exercises on Friday and Saturday April 28 and 29, 1972. This year the Law Day Program will be expanded to provide students, faculty and guests with a two day conference in which those attending will have the opportunity to listen to talks by leading scholars on the subject "Freedom of Speech, Its Use and Abuse in the United States and the Communist Countries".

The Student Bar feels this topic could not be presented at a more opportune time. With President Nixon having just completed his trip to the People's Republic of China, this should be a subject of contemporary interest.

At the conclusion of the conference, the Student Bar Association will hold its Law Day Banquet Saturday evening in the main banquet room of the Hilton Inn in Winston-Salem, During the banquet, awards will be presented by the Law School and student organizations. Following these presentations, the Student Bar will present as the main speaker Sir Leslie Munro.

A brief biography of our speaker reveals he is from New Zealand and received his legal education at Auckland University. Mentioning just a few of our distinguished guest's positions: he has served as New Zealand's Ambassador to the United States, New Zealand's permanent representative to the United Nations where he was on the Trusteeship Council, Security Council and in 1957-1958 President of the United Nations. Among the universities awarding our guest honorary degrees are Harvard, Colgate, Michigan, Bradley, Syracuse and Auckland.

Immediately following this year's banquet there will be refreshments and dancing. It is hoped that a large contingent of alumni will be present for the conference and the evening activities.

Kenneth E. Hendrycy

Kenneth E. Hendrycy

Chairman
Student Bar Association

REGISTRATION FORM

LAW DAY CONFERENCE

Name: _____

Address: _____ Zip _____

I Will attend

( ) Luncheon, 12:30 P.M., Friday, April 28, 1972, at the Holiday Inn West, Winston-Salem - Cost: Free

( ) Afternoon session, Friday, April 28, 1972, at the Holiday Inn West, Winston-Salem - Cost: Free

( ) Morning session, Saturday, April 29, 1972, at the Holiday Inn West, Winston-Salem - Cost: Free

I ( ) and my wife ( ) and ___guests will attend the Law Day Banquet, and Dance (mixers provided), Saturday, April 29, 1972, at 6:30 P.M. at the Hilton Inn in Winston-Salem - Cost: $7.75 per person.

I remit herewith $_____, please reserve the appropriate number of seats for the luncheon and/or banquet.

Signature _____

Date _____

We regret that space limitations dictate that our reservations be on a first come first serve basis. Should we run short of space, you will be notified immediately and your check returned.

_____

Return to:

Mr. Charles Dashiell, Registration Chairman
ABA-SBA Law Day Conference
School of Law
Wake Forest University
Winston-Salem, North Carolina 27109

JUSTICE LAKE ADDRESSES

At a special ceremony held during homecoming weekend (November 6), I. Beverly Lake, Associate Justice of the North Carolina Supreme Court, two-time aspirant for the Democratic nomination for Governor, and for 18 years a member of the law faculty, delivered an address to what he termed "the most remarkable graduating class ever assembled." Lake referred to the Law School alumni ("distinguished judges, executives of successful business enterprises, large and small, legislators, the Attorney General - Governor to be, Assistant Attorneys General, solicitors, local government officials, university professors, ordained ministers of the Gospel and a host of skilled and respected advocates and counsellors, whose services are sought after and whose advise is followed, with - I trust - appropriate financial compensation") who assembled in Wake Chapel to convert their LL.B. degrees to J.D. degrees.

Dr. Lake's address was notable not only for its nostalgic references to the old campus and its insights into his judicial philosophy, but for his assessment of the Law School's role in the future of the state's legal profession.

"Some of you - not many - share with former Deans Weathers and Lee and me personal recollections of those days of ancient glory when the immortal triumvirate, Gulley, Timberlake and White, in a single classroom and with a cubby-hole library, consisting of only the Consolidated Statutes, one set of the North Carolina Reports, Corpus Juris and a broken set of United States Supreme Court Reports, taught us to practice law and inspired us to reach upward for the skills of our profession. But no one present shares with me the recollections of teaching on this faculty with those great men. Profound scholars, able lawyers, Christian gentlemen, they welcomed me to the faculty and showed me the path of the teacher with a generous

Egbert L. Davis ('04) and Dr. Hubert Jones ('09) were the oldest Alumni receiving J.D. Degrees at the Homecoming Weekend ceremonies.

kindness I can never forget. To work with such men in guiding the first, wobbly professional footsteps of many of you great lawyers was a privilege I shall always remember gratefully.

Twice in recent years I tried to convince the people of North Carolina that we cannot build a better future, especially in the realm of education, without understanding of and appreciation for the past. Despite my lack of persuasiveness on those occasions, this truth remains unshaken. As Mr. Justice Holmes said, "Continuity with the past may not be a virtue, but it is a necessity."

You know of the need for and plans for the addition to the building, which now stands as a daily reminder of our law school's indebtedness to Dean Weathers' determination and wise planning. It would be surplusage for me to tell you about construction costs . . . May I, ... talk about intangibles, about aims and aspirations, for, as all who studied under Gulley, Timberlake and White know:

Brick walls do not a law school make,
Nor cap and gown a sage.

RETURNING LAW ALUMNI

. . . I have referred to the old Wake Forest Law School as unique. So must be the Wake Forest Law School of the long future or it will not hold its great teachers. With the utmost respect for her sister institutions at Chapel Hill and Durham, there is no need and no justification for a Xerox copy of either here on the Reynolda hills. The Wake Forest Law School of tomorrow will be far too expensive an operation, if our goal is simply to be like our neighbors. We never have been.

. . . Now-a-days, an increasingly unique feature of our school is that it is a law school, not a school of social engineering, majoring in the advocacy of alleged civil rights, welfare stateism and the protection of the vicious criminal against an alarmed and outraged society. If the current trend in law school activities continues, and if we hold Wake Forest on course, her future is secure, for her graduates will be in great demand by clients who seek a lawyer, not a social engineer. Forthermore, her graduates will be men of character and concern for others, for that comes as a by-product of legal education at a university which finds no cause for apology in being, and being known as, a Christian university.

What are some of these things you were taught at Wake Forest? You were taught to use skillfully the tools and techniques of your profession, to aspire to be and strive to be a faithful and courageous and an informed advocate and councellor. You were taught to recognize that Law and Justice are not synonomous terms, that only in the Kingdom of Heaven is there complete coincidence of the two, but, here in the courts and offices of

Continued on page 19

(l to r) President James Ralph Scales; Phil B. Whiting ('61), President of the Lawyers Alumni Association; James W. Mason ('38), Co-Chairman Building Fund, Dean Weathers, Dean Bowman, and James F. Hoge ('22), chairman of out of state gifts, break ground for the new wing for the Law Building.

A MESSAGE FROM THE DEAN

The alumni of the School of Law, together with other friends of the School, have pledged or given over $400,000 for the Building Fund. That total does not include Mrs. Guy Carswell's challenge gift of $200,000. All of us at the School are immensely grateful for this magnificent support.

Approximately 400 alumni have contributed in the present campaign. That leaves almost 1100 who have not contributed. I hope very much that those who have not yet responded will do so soon, for we still need to raise an additional $150,000 in order to complete the new wing without having to borrow funds. Some of this we hope to obtain from foundations and corporations; a higher percentage of alumni participation will enhance our chances of getting substantial help from these sources.

Construction of the addition has been underway since November. After a fast start, the work was slowed by bad weather during December and January, but is now moving speedily ahead. (And, as our faculty and students will attest, noisily ahead.) We expect the new facilities to be ready by the fall of this year.

With great sadness, I report the death on March 25, 1972 of Professor Leonard S. Powers, Associate Dean of the University of Florida College of Law. Professor Powers will be remembered by many of our alumni as a member of the Wake Forest Law Faculty in the early 1950's. We had been looking forward to having him with us as a Visiting Professor in the School of Law during the 1972 Fall Term, so our sense of personal loss is especially keen.

We also are very pleased to announce the appointment of Judge Rhoda B. Billings to the Law Faculty. A 1966 honor graduate of the School of Law, Judge Billings has practiced law in Winston-Salem and, since 1968, has been a judge of the Forsyth County District Court. She will join us as an Assistant Professor of Law in January 1973, after the completion of her term on the bench.

Dean Bowman

Almost 1300 persons have applied for admission to the School of Law in the Fall Semester class. We shall be able to admit only 95. Thus, over 90% of the decisions of our Admissions Committee will represent bad news for the applicant. The dimensions of the problem are underscored by the fact that a very large percentage of the applicants are North Carolina residents. In making our admission decisions, you can be sure that we shall be mindful of the legitimate claims of our constituency. We also shall be mindful of our duty as a professional school to bring into the profession the best and most promising men and women who seek to enter it. Many hard cases will have to be decided, and we ask for your understanding as our admissions officers go about this unenviable but unavoidable task.

The Trustees of Wake Forest University have approved a tuition increase for the School of Law. The tuition charged in the 1972-73 academic year will be $712.50 per semester, which is an increased of $137.50 over the comparable figure for this year. The

Continued on page 19

JUDGE BILLINGS TO JOIN FACULTY

Rhonda Bryan Billings, a district Judge from the 21st Judicial Bistrict, will join the law faculty next fall. Judge Billings, a cum laude graduate of Wake Forest Law School ('63), earned her undergraduate degree at Berea College in English.

Prior to election to the bench, Judge Billings was engaged in a general practice in Winston-Salem with her husband, Donald R. Billings, also a Wake Forest law graduate.

Judge Billings is a vice-president of the Winston-Salem Soroptimist Club, the secretary-treasurer of the North Carolina Association of District Court Judges, a member of the Criminal Code Commission, and has been included in Outstanding Young Women of America.

Mrs. Billings is the mother of two children, Renee, 11, and Doug, 9.

Judge Billings

JUSTICE LAKE

(Continued from page 17)

North Carolina, it is the privilege of our profession to labor to close the gap between them. You were taught to be a man, not a mere pawn of the chessboard of society to be pushed about and expended according to the whim of a gigantic bureaucracy. You were taught to understand, appreciate and, therefore, love your country and State, and to aspire to serve both in their courts, their public offices and, if need by, on other battlefields. You were taught the meaning of and beauty of the blueprint for the government of free men and women, which we call out Constitution. Consequently, you know the difference between due process of law and the shielding of criminals from just punishment, the difference between freedom of speech and freedom to urge the disruption of society and the obstruction of the courts of justice, the difference between freedom of the press and freedom to disseminate filth and pornography or to jeopardize the public safety by purchasing stolen documents from a common thief and publishing them. It is to be devoutly hoped that, in the not too distant future, knowledge of these elementary facts of life will seep even into the chambers of the United States Supreme Court and be reflected in its opinions, not to mention the judgments of some Federal courts wherein your voices are more frequently heard."

DEANS MESSAGE

(Continued from page 18)

$75.00 activity fee will remain unchanged, so that the total cost of tuition and fees for the coming year will be $1525.00, as compared to $1225 for the present year.

We wish this increase could be avoided; it is, however, absolutely essential if the School is to continue to make progress in the face of ever-rising operational costs. Moreover, it should be noted that our tuition still will be substantially lower than tuition in the undergraduate school and in virtually all other private law schools. Even with this increase, legal education at Wake Forest will remain one of the great bargains of this inflation-ridden era.

RECENT DECISIONS AND LEGISLATIVE PROPOSALS

Summarized below are recent North Carolina and federal cases. The purpose of the Law Articles Section is to give the reader a concise, useful discussion of interesting points of law decided in recent cases. At the end of each article is a Research Bibliography which will enable the reader to begin meaningful legal research without wasting time in searching for law on point with the article. Also included in this section are Legislative Proposals which are model statutes the author feels are needed as law in North Carolina.

NORTH CAROLINA ABORTION LAW

Corkey v. Edwards, 322 F. Supp. 1248 (W.D.N.C. 1971)

Plaintiff Corkey, as director of the Mecklenburg County Family Planning Center, and others, brought this class action to have the North Carolina abortion statutes declared unconstitutional and their enforcement enjoined. Plaintiff contended that such statutes violate a woman's "fundamental right" to choose whether or not to bear children and, through a residency requirement, unconstitutionally infringe on the right of freedom to travel. A three judge federal court refused to issue an injuction but did strike down the residency requirement. This note will examine the *Corkey* case and, through it, summarize the current status of abortion law in North Carolina.

The statutes in question, N.C. Gen. Stat. §§ 14-44 to 14-45.1 (1971), prohibited abortion. However, a licensed doctor, "if he can reasonably establish" that continuance of the pregnancy will threaten the life or impair the health of the mother, lead to the birth of a gravely deformed child, or that pregnancy has resulted from rape or incest, may legally terminate the pregnancy. N.C. Gen. Stat. §§ 14-45.1 (1971) placed the following restrictions on the availability of these exceptions: the woman must have given her written consent, she must have resided in the state for at least four months prior to the abortion (except in emergency cases), three doctors must have examined her and certified the necessity for the operation, and it must be performed in a hospital licensed by the Medical Care Commission.

Plaintiffs contended that any such restrictions violated a fundamental freedom to choose whether to have children and to implement this choice through abortion, citing the now famous case of *Griswold v. Connecticut,* 381 U.S. 479, 85 S. Ct. 1678, 14 L. Ed.2d 510 (1965). In *Griswold,* the United States Supreme Court assured the right of married couples to use contraceptives by setting up a zone of constitutionally protected privacy around it; plaintiffs urged the *Corkey* court to extend this zone of privacy to include abortion. The court refused and distinguished *Griswold,* pointing our that it protected the right to choose to bear children before (not after) pregnancy. The court then ruled that, following conception, a state could reasonably assert an interest in offering an embryo a chance to survive.

Plaintiffs next claimed that the four month residency requirement infringed upon the right to travel guaranteed to all citizens. Plaintiffs based this argument on *Shapiro v. Thompson,* 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed.2d 600 (1969). The defense countered

with the argument that elimination of this requirement would produce an influx of non-residents who would overburden existing medical facilities. The court did not accept this defense and struck down the residency requirement as unconstitutionally overbroad. In particular, this requirement was held to penalize those who entered North Carolina with a genuine desire to make it their place of residence.

Finally, the court construed the clause permitting a doctor to perform an abortion "if he can reasonably establish that" it is within one of the exceptions noted above. The court held this clause must mean that the doctor establishes to his own satisfaction that one of the statutory exceptions applies. In any prosecution for abortion, the court held, due process would not allow an interpretation to the effect that the accused physician must prove to the satisfaction of the court and jury that the abortion was within the stated exceptions. Rather, the burden is on the state to show that the abortion did not fall within one of these categories. This construction was approved by the U.S. Supreme Court in *U.S. v. Vuitch,* 402 U.S. 62, 91 S. Ct. 1294, 28 L. Ed.2d 601 (1971).

The current status of abortion law in North Carolina may now be summarized. The three major grounds for abortion noted above remain in effect. In any prosecution, the burden of proof must lie with the state to show non-necessity. Finally, through the influence of the *Corkey* decision, the North Carolina legislature has recently revised N.C. Gen. Stat. § 14-45.1 (1971) making the residency requirement thirty days, and allowing for abortion when two doctors certify the necessity for the operation.

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1. For cases generally supporting the plaintiffs' theory see: *Babbitz v. McCann,* 310 F. Supp. 293 (E.D. Wis. 1970) and *Roe v. Wade,* 314 F. Supp. 1217 (N.D. Tex. 1970). For a case following the theory of the court, see *Steinberg v. Brown,* 321 F. Supp. 741 (N.D. Ohio 1970).
2. See generally Abortion - The New North Carolina Abortion Statute, 46 N.C.L. Rev. 585 (1968) for a discussion of the 1967 abortion reform provisions of N.C. GEN. STAT. § 14-45.1 which are in effect today

Robert G. Tanner

CRIMINAL LAW:

MANDANTORY TRIAL BY JURY OF TWELVE

State v. Hudson, 280 N.C. 74, 185 S.E.2d 189 (1972)

The North Carolina Supreme Court recently reaffirmed a constitutional protection of the rights of the accused in criminal cases when it ruled that the defendant, having pleaded not guilty, may not waive trial by a jury of twelve in a felony trial.

In *State v. Hudson,* 280 N.C. 74, 185 S.E.2d 189 (1972) the court heard on appeal a conviction for assault with intent to commit rape. The stated facts presented an especially brutal attack on a fourteen year old girl. During the trial in Superior Court in Cabarrus County one of the duly impaneled jury members became ill. In open court the defendant, through his attorney, waived the right to a jury of twelve, preferring to continue with eleven persons on the jury, evidently to avoid further delay of the trial. Upon conviction defendant appealed on the grounds of failure of the court to allow motion for nonsuit. (The supreme court heard this case without previous consideration by the court of appeals under N.C. Gen. Stat. § 7A-31 (b) (4) (1967).)

The court upheld the denial of the motion for nonsuit, but turned to the constitutional guarantee of trial by jury, avowing that a jury in criminal cases must be made up of twelve persons and any number fewer than twelve

does not constitute a jury. The court awarded a new trial *ex mero motu.*

North Carolina has traditionally maintained a high degree of fidelity to the precept of the right to trial by jury as part of the Anglo-American legal system. For example, in 1933 the General Assembly passed into law Chapter 23, amended in Chapter 469, of the session laws of that year. This act provided for a conditional plea of *nolo contendere,* which allowed the judge in all but capital cases to hear the matter without intervention of the jury and to find the defendant guilty or not guilty. In *State v. Camby,* 209 N.C. 50, 182 S.E. 715 (1935) the supreme court held this legislation unconstitutional, in violation of N.C. Const. art. I, § 13 (1946) (now § 24). The court referred to the superior court as "the court of last resort so far as a jury trial is concerned," which is as true today as in 1935. "The parties are not permitted to change the policy of the law and substitute a new method of trial in criminal prosecution for that of trial by jury as guaranteed by the Constitution." In *State v. Norman, 276 N.C. 75,* 170 S.E.2d 923 (1969) the court similarly held that there was no conditional plea of *nolo contendere.*

N.C. Const. art. I, § 24 (formerly § 13 of this article) is the constitutional provision for the right of jury trial in criminal cases:

> No person shall be convicted of any crime but by the unanimous verdict of a jury in open court. The General Assembly may, however, provide for other means of trial for misdemeanors, with the right of appeal for trial *de novo.*

In construing this section it has been held that one inherent characteristic of the jury in a criminal trial is that it consists of twelve persons. See *State v. Berry,* 190 N.C. 363, 120 S.E. 12 (1925). The General Assembly has acted upon the power granted it in § 24 by enacting N.C. Gen. Stat. § 7A-196 (1967) which provides that, under the new court system, the trial of misdemeanor offenses in the district court shall be without a jury, but that if the defendant wishes to appeal there will be a trial *de novo* in the superior court, sitting with a jury. In *State v. Sherron,* 4 N.C. App. 386, 166 S.E.2d 836 (1969), this statute was upheld as being constitutional and not infringing on the right of a jury trial. Also, the right to a jury of twelve was not affected by the statute.

In the instant case the court notes that the Judicial Council and the Constitution Study Commission have both advocated that the defendant in criminal actions be given the right to waive a jury trial by modifying the Constitution so that the General Assembly could at its discretion legislate such an option. The General Assembly rejected this advice.

In summary, North Carolina, through *State v. Hudson, supra,* has again testified to its adherence to the rules which the Constitution provides to protect the rights of the accused. A defendant who pleads "not guilty" in superior court cannot waive his right to a jury trial, and a jury of twelve persons must render a unanimous verdict in open court. There is no legal right for a criminal defendant in a jury trial to be tried, either voluntarily or involuntarily, by a jury of less than twelve persons.

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2. *State v. Hill,* 209 N.C. 53, 182 S.E. 716 (1935).
3. 2 N.C. Index 2d Constitutional Law §§ 29, 37, (1967, Supp. 1971).
4. 5 N.C. Index 2d *Jury* §§ 1, 3 (1968).
5. 12 N.C. Digest *Juries* §§ 29, 32 (1937, Supp. 1971).

Beverly T. Beal

CIVIL PROCEDURE:

TRIAL COURT'S JURISDICTION AFTER NOTICE OF APPEAL GIVEN

Wiggins v. Bunch, 280 N.C. 106, 184 S.E.2d 879 (1972).

The plaintiff, Wiggins, began an action in the nature of a processioning proceeding against Bunch *et al* to establish boundary lines to a tract of land allegedly owned by him. After the defendants filed an answer denying plaintiff's title to the land, the State of North Carolina moved to be made an additional party defendant contending it was the owner of the land. At the trial the defendants obtained a dismissal by motion at the end of plaintiff's evidence and a judgment to that effect was signed by the judge on April 28, 1970. On that date, plaintiff gave a notice of appeal in open court.

On June 23, 1970, the plaintiff gave the defendants notice of his intention to move that the judgment be set aside on the basis of newly discovered evidence by Rules 59 and 60 of the new North Carolina Rules of Civil Procedure. A hearing on the motion was held resulting in an order setting aside the judgment of dismissal and granting the plaintiff a new trial. The defendant, the State of North Carolina, appealed from the order.

The case on appeal before the North Carolina Supreme Court presented the issue of whether the trial court had jurisdiction to entertain the plaintiff's motion to set aside judgment by Rules 59 and 60 of the new Rules of Civil Procedure after the plaintiff's notice of appeal had been given. In an opinion by Justice Branch, the supreme court held that the trial court had no jurisdiction to consider the motion after the notice of appeal had been given and, therefore, vacated the order.

The purpose of this article is to examine, in a brief summary of *Wiggins v. Bunch,* 280 N.C. 106, 184 S.E.2d 879 (1972), the effect of Rules 59 and 60 of the new Rules of Civil Procedure on the jurisdiction of a trial court after an appeal is taken.

Generally, when an appeal is initiated, the trial court loses jurisdiction of the case and the appellate court gains jurisdiction. *American Floor Machine Co. v. Dixon,* 260 N.C. 732, 133 S.E.2d 659 (1963). Since a motion in the cause can only be entertained by the court that has jurisdiction of the cause, the trial court cannot act on a motion, such as a motion to set aside judgment in *Wiggins v. Bunch, supra,* subsequent to the notice of appeal. *Bledsoe v. Nixon,* 69 N.C. 82 (1873).

At first glance, however, Rules 59 and 60 appear to allow the trial judge to act on a motion after judgment irrespective of whether an appeal is lodged or not. Rule 59 permits a motion for a new trial on grounds of newly discovered evidence if the motion is served not later than ten days after the entry of the judgment. Rule 60 allows a motion to set aside judgment on the basis of newly discovered evidence if the new evidence could not have been discovered by due diligence in time to make a motion under Rule 59(b), provided that this motion is made within one year from the judgment. In both rules there is no mention of the effect of an appeal on their application.

Since this is a case of first impression and the Federal Rule 60(b) is similar to the North Carolina Rule 60(b), Justice Branch analyzed "federal decisions for interpretation and enlightment." *Switzer v. Marzall,* 95 F. Supp. 721 (1951), citing *Daniels v. Goldberg,* 8 F.R.D. 580 (S.D.N.Y. 1948), stated:

> The amendments to the Rules specifically give to the district court power to act in certain instances after an appeal has been filed, Rules 60(a), *but none of these confer on a district court the power to vacate a judgment after an appeal has been filed.* (Emphasis by the North Carolina Supreme Court.)

And 7 Moore, *Federal Practice,* Par. 60:30(2), (2d ed. 1970) states clearly: " . . . during the pendency of an appeal it is generally held that the district court is without power to grant relief under Rule 59; or to vacate, alter or amend the judgment under Rule 60(b), ... "

The obvious result is that Rules 59 and 60 have not changed the general rule that the trial court loses jurisdiction of a case when it is appealed. Thus, it has no authority to consider post-judgment motions such as a motion to set aside judgment after the case is appealed.

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3. *Pelaez v. Carland,* 268 N.C. 192, 150 S.E.2d 201 (1966).
4. *Switzer v. Marzall,* 95 F. Supp..721 (D.D.C. 1951).
5. 7 Moore, *Federal Practice,* Par. 60:30 (2), (2d ed. 1970).

Jerry Cash Martin

CRIMINAL LAW:

VERBAL COMMENT AND THE OBSTRUCTION OF JUSTICE

State v. Leigh, 278 N.C. 243, 179 S.E.2d 708 (1971).

At approximately 11:30 PM on the night of January 20, 1970, Deputy James Peel received a complaint from one I.J. Simpson and Larry Spencer concerning an assault that took place on the main street of Creswell, North Carolina. Deputy Peel immediately went to the main street of Creswell for the purpose of investigating the complaint. Upon arriving on the scene Peel approached Raymond Blount with the intention of questioning him concerning the complaint. Blount at the time of Peel's arrival was found sitting in the defendant's car. Upon confronting Blount he was asked to get out of the car and accompany Peel for questioning. As Peel approached Blount the defendant Leigh said, "You don't have to go with that Gestapo Pig." However, Blount disregarded Leigh's urgings and followed Peel to his car. Leigh during this time continued to urge Blount not to accompany the officer. He then approached Peel's car and advised Blount that he did not have to go with him and to give the officer "five". After this action Peel ordered Leigh away from the car, but at this time did not place the defendant under arrest. Peel testified that Blount did not immediately get in his car because of the defendant's interference. However, at no time was Peel obstructed from opening the door. The defendant was subsequently arrested and brought to trial during the 1970 Session of Washington County Superior Court on the charge that he, Phillip Leigh, on the 20th of January 1970 did unlawfully, and willfully delay and obstruct Deputy Peel, a duly empowered law enforcement officer, in the discharge of his duty.

The defendant after entering a plea of not guilty then presented evidence that he did not delay or obstruct the officer in the performance of his duty. The defendant, however, admitted that he advised Blount that he did not have to accompany the officer after the officer called him a name with racial overtones. The defendant's evidence further showed that he did not touch Peel and that the officer never touched the defendant.

The defendant was found guilty as charged and a sentence of six months imposed. The defendant then appealed to the North Carolina Supreme Court on the grounds that the trial court committed prejudical error in

not allowing his motion for nonsuit, and in denying his motion to set aside the verdict as being against the weight of the evidence.

As the basis of his appeal the defendant contended that his conduct at the scene of the investigation did not constitute an offense under the terms of N.C. Gen. Stat. § 14-223 (1969).

N.C. Gen. Stat. § 14-223 (1969) provides: "If any person shall willfully and unlawfully resist, delay or obstruct a public officer in discharging or attempting to discharge a duty of his office, he shall be guilty of a misdemeanor punishable by a fine not to exceed five hundred dollars, imprisonment for not more than six months, or both."

Undeniably, Officer Peel was discharging or attempting to discharge a duty of his office as required by the statute when he began an investigation of the incident. The problem thus confronting the court was whether the verbal comments of the defendant were such as to resist, delay or obstruct the officer while in the performance of his duty.

In attempting to interpret the meaning of the words "resist, delay or obstruct" as proscribed within the statute the court relied on various legal works. The most notable being in 3 *Wharton's Criminal Law and Procedure* § 1284 (1957) which stated:

> As a general rule, under statutes containing the words 'obstruct, resist, or oppose,' or 'resist, obstruct, or abuse,' or the single word 'resist' the offence of resisting an officer can be committed without the employment of actual violence or direct force, and without making threats . . . .
>
> To 'obstruct' is to interpose obstacles or impediments, to hinder, impede, or in any manner intrude or prevent, and this term does not necessarily imply the employment of direct force or the exercise of direct means.

In North Carolina the obstruction of an officer in the performance of his duty has been held to require a willful obstruction or interference on the part of the defendant. Such obstruction does not require the use of actual violence, nor is the demonstration of force indispensable to such obstruction or interference. *State v. Estes,* 185 N.C. 752, 117 S.E. 581 (1923).

It was thereby held in *State v. Leigh, supra,* that although no actual violence or force was used by the defendant, application of the descriptive words of the statute in their common and accepted meaning or as interpreted by the courts led the court to conclude that the defendant did by actions and language delay and obstruct the officer in the exercise of his duties.

The Supreme Court of North Carolina in holding as it did in this case has shown that under N.C. Gen. Stat. § 14-223 (1969) the words "delay" and "obstruct" appear to be synonymous. However, though the word "resist" would infer more direct and forceful action, it does not require such action as a prerequisite. Since the statutory words are joined by the disjunctive ('or'), the statute will be applicable to any cases falling within any one of the descriptive words.

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4. *Reed v. State,* 103 Ark. 391, 147 S.W. 76 (1912).
5. *Drifoos v. Jonesboro,* 107 Ark. 99, 154 S.W. 196 (1913).

R. Lee Farmer

CRIMINAL LAW:
WAIVER OF COUNSEL

State v. Blackmon, 280 N.C. 42, 185 S.E.2d 123 (1971).

The trial court found as facts in this case that the defendant was taken into custody on a worthless check charge, that within a few moments thereafter the sheriff read to the defendant a warrant charging him with murder and advised the defendant of his rights by giving him the full *Miranda* warning, including his right to have an attorney present during the interrogation and his right to have such attorney appointed before any questioning if he could not afford one. The court further found that the defendant did not request the presence of an attorney and that he understood his rights. In the course of the interrogation he made incriminating confessions freely and voluntarily.

On appeal the North Carolina Supreme Court held that the trial court erred in holding that, since the defendant had been correctly informed of his right to the presence of counsel at the interrogation and did not request it, the making of the statements was a waiver of his right to have counsel present. The plain language of the *Miranda* decision requires a waiver of right to counsel knowingly and intelligently made. ". . . (F) ailure to ask for a lawyer does not constitute a waiver." *Miranda v. Arizona,* 384 U.S. 436, 470; 86 S. Ct. 1602, 1626, 16 L. Ed.2d 694, 721 (1966).

The problem suggested in this case is determining what criterra an officer can use in deciding whether a suspect has made a valid waiver of his right to counsel.

As this case shows, the waiver must be express and cannot be implied from the suspect's silence or uttering of voluntary statements. Prior to 1969 there was no difference in the requirements for a waiver of counsel by indigents and by non-indigents. Each could waive the right either orally or in writing. However, the enactment of N.C. Gen. Stat. § 7A-450 *et seq.* (1969), effective July 1, 1969, changed the requirements so that an indigent could waive right to counsel only in writing. It should be pointed out here that this requirement relates only to in-custody interrogation and that counsel is not required where a narrative confession is not the result of in-custody interrogation. The statute also provided that an indigent person, except one charged with a capital crime, who has been informed of his right to counsel may, in writing, waive the right to in-court representation by counsel, if the court finds of record that at the time of waiver the indigent acted with full awareness of his rights and of the consequences of the waiver.

In imposing the requirement that an indigent's waiver of counsel must be in writing, the North Carolina General Assembly imposed a more stringent requirement than the federal courts have done. However, this has been somewhat relaxed by the 1971 amendment to N.C. Gen. Stat. § 7A-457 (1971) which provides that an indigent person who has been informed of his right to counsel at any out-of-court proceeding, may, either orally or in writing, waive the right to out-of-court representation by counsel.

Thus, as the law stands now, an indigent person, except one charged with a capital crime, may waive right to counsel at any in-court proceeding, but only in writing. Also, an indigent person may waive right to counsel at any out-of-court proceeding, either orally or in writing, but the waiver must be express.

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6. N.C. GEN. STAT. § 7A-450-457.

William H. Freeman

TORTS:

FAMILY PURPOSE DOCTRINE ENLARGED

White v. Vanada, 13 N.C. App. 19, 185 S.E.2d, 247 (1971).

William E. Vanada, defendant, lived in Townsend, Tennessee, and was engaged in business in Tennessee. Defendant's son, William Ronald Vanada, was in the Marines, and in May, 1968, was stationed at Camp Lejeune, North Carolina. While on leave from military service, he went home and stayed at his father's residence without being required to pay room and board, but his father did not provide for any of his other expenses.

On Sunday, May 12 1968, William Ronald Vanada was returning to Camp when he negligently collided with the plaintiff, George White, on U.S. Highway No. 64 in Catawba County. The defendant's son was driving an automobile owned by the defendant, and the defendant had given his son special permission to use the automobile to drive back to Camp.

The lower court granted the defendant a motion for a directed verdict, and from judgment allowing the motion and dismissing the action, plaintiff appealed. The North Carolina Court of Appeals reversed. *White v. Vanada,* 13 N.C. App. 19, 185 S.E.2d, 247 (1971). The court held that the evidence was sufficient to require the jury to pass upon an issue as to defendant's responsibility for his son's action. The decision holds N.C. Gen. Stat. § 20-71.1 (a)(b) (1961) applicable, and states that the family purpose doctrine did not allow the defendant to have a directed verdict as a matter of law; and that the son, although self-sufficient, was still a member of the family. The purpose of this note is to discuss the application of the family purpose doctrine.

The family purpose doctrine developed as a matter of social policy as an extension of *respondeat superior. Rushing v. Polk,* 258 N.C. 256, 128 S.E.2d 675 (1962). Generally, it is a basis by which a person who owns or keeps an automobile, which is furnished to the members of his or her family or household for their general use, convenience and pleasure, becomes liable for the negligent acts of any member of the family who might be driving it with his or her consent, express or implied. It is a principal and agent relationship. 3 Lee, *North Carolina Family Law* § 246 (3d ed. 1963).

The doctrine was first discussed about 1913. *Linville v. Nissen,* 162 N.C. 78, 77 S.E. 1096 (1918). However, the first clear approval appears in *Robertson v. Aldridge,* 185 N.C. 292, 116 S.E. 742 (1923). The Court held that the family purpose doctrine constitutes an exception to the common law rule with respect to the liability of a parent for the torts of his minor child in automobile accidents. The opinion states:

> . . . (I)t is . . . held, in our opinions by the great weight of authority that where a parent owns a car for his convenience and pleasure of the family, a minor child who is a member of the family, though using the car at the time for his own purposes with the parent's consent and approval, will be regarded as representing the parent in such use, and the question of liability for negligent injury may be considered an determined in that respect.

Watts v. Lefler, 190 N.C. 722, 130 S.E. 630 (1925), applied the doctrine to adults living in the household of the defendant. It was

extended to non-residents if the accident occurs in North Carolina. *Goode v. Barton,* 238 N.C. 492, 78 S.E.2d 398 (1953). And in *Griffin v. Pancoast,* 257 N.C. 52, 125 S.E.2d 310 (1962), it was held that the defendant does not actually have to own the automobile; " . . . that is, if it is kept or maintained by him for the general use, pleasure and convenience of the family." The test is control, or the right to control.

In *Smith v. Simpson,* 260 N.C. 601, 133 S.E.2d 474 (1963), however, the Court held that the doctrine did not apply where the son was paying for the automobile himself, with some help from his father, and the son had exclusive control of the automobile. This has been viewed by some as the turning point for the application of the family purpose doctrine. The decision states:

> At best the family purpose doctine is an anomaly in the law. This Court was reluctant to adopt it initially. As the use of motor vehicles increased the Court gradually extended the application of the doctrine. We are not disposed to extend this doctrine in this state beyond the limits already reached . . . . The importance of the doctrine in North Carolina has been greatly reduced by the Financial Responsibility Acts. 260 N.C. at 612, 133 S.E.2d at 483.

If *Smith v. Simpson, supra,* was the turning point for the family purpose doctrine, then *White v. Vanada, supra,* seems to have reversed field again. This is due to its broadening of the concept of what a "member of the family" is within the family purpose doctrine. Judge Parker states in *White v. Vanada, supra,* that, even though at the time of the collision the defendant's son was serving in the armed forces and for the period of his enlistment was not dependent upon his father for support, this should not, as a matter of law, exclude him from membership in his father's family. " . . . (T)o so hold would in these times automatically exclude from the family group thousands of young men whose relationship with their parents and within the family group, and whose financial responsibility, has undergone no real change." 13 N.C. App. at 25, 185 S.E.2d at_____ .

The Court's logic is sound. It bases its argument on a Georgia Supreme Court decision, *Dunn v. Gaylor,* 218 Ga. 256, 127 S.E.2d 367 (1962).
The decision states in part:

> Every case concerning the application of the family purpose doctrine must stand upon its own facts as to what the parent has voluntarily assumed as a part of the business to which he will devote himself and to which he will have his vehicle applied . . . . A parent is not relieved from liability merely because a child is an adult or self-sustaining.

White v. Vanada, supra, is noteworthy if only for the fact that it brings into the purview of the doctrine the thousands of members of the military still linked to their parent's home and using automobiles under the control of their parents. But more than that, it could signal new life to the family purpose doctrine. This decision, coupled with previous decisions that hold the doctrine applicable to non-residents, allows redress in the court to many who, heretofore, did not have the approval of the court to reach the family head, who, chances are, is more financially solvent than the actual wrongdoer.

Judge Parker's emphasis shows that the court is cognizant of the situation in North Carolina, where two major U.S. military bases are located.

The court realized, as does the Georgia court, the need of this means of reaching one who is more able to bear the weight of expenses due to the negligence of those in his family or household.

Smith v. Simpson, supra, stated that the importance of the family purpose doctrine

was greatly diminished with the advent of the Financial Responsibility Acts. But there are two notable problems that these acts do not handle adequately. The first is where the extent of the plaintiff's damage is more than the statutory amount of liability insurance, leaving the defendant partially "judgment proof". The second is when the family automobile involved was owned by an uninsured citizen of a state having no financial responsibility act. Note, 38 N.C.L.Rev. 249, n.4 (1960).

White v. Vanada, supra, helps to alleviate these problems somewhat by allowing the head of the family or household to be held liable for the torts of his children or members of his or her household who are still financially tied to home. This is no small class, to be sure. Moreover, it goes far in advancing the social policy for which the doctrine was adopted, and nurtures a position for its future application, in spite of the Financial Responsibility Acts.

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6. *Small v. Mallory,* 250 N.C. 570, 108 S.E.2d 852 (1959).

R. Michael Wells

LEGISLATIVE PROPOSALS

A PROPOSAL TO CHANGE PRESENT ADOPTION LAWS

A survey of North Carolina adoption laws in light of the widely publicized New York case of *People ex rel. Scarpetta v. Spence-Chapin Adoption Service,* 28 N.Y. 2d 185, 269 N.E.2d 787 (1971), suggests that the North Carolina laws have the same weakness as the laws applied by the New York courts in *Scarpetta.* In that case a young woman surrendered her child to an adoption agency for placement. Twenty-one days after the written surrender, the mother changed her mind and requested the return of the child, but the agency refused her request. The New York Court of Appeals found the mother had not been in a state of mind to make a surrender freely and ordered her child returned. The adoptive parents, with whom the child had been for ten months, refused to obey the court order and fled to Florida where litigation is continuing.

Cases such as this illustrate the inherent weakness in laws which delay the time when courts become involved in the adoptive process. The natural parent is not protected in that she makes a decision about termination of parental rights in circumstances fraught with shame, fear and uncertainty. Once the consent is signed, she may have to assert her rights before a non-judicial officer who has an interest in keeping the baby for adoptive placement. The parent must then wait for the first judicial hearing some months later or initiate action on her own--either of which will cause more delay in determining her rights. Placement agencies are subject to the same uncertainties. An agency may pursue its lengthy course of caring for and finding an adequate placement for the child only to have the court find later that the surrender was not

freely given. The position of adoptive parents is even more precarious because they will probably have no rights in the matter since the first rights usually vest only after the entry of the interlocutory order.

Present North Carolina adoption laws do not provide adequate protections from these dangers. Under N.C. Gen. Stat. § 48-9 (1969), a natural parent who surrenders a child to an adoption agency is a party to the adoption but does not have to be served with process. The parent may surrender the child under questionable circumstances and then not know of the hearing when she can contest the validity of the consent. On the other hand, a parent giving consent under N.C. Gen. Stat. § 48-9 (1969) would be able to appear at the hearing for entry of the final order many months into the adoptive process and challenge the validity of the consent. If the challenge were denied, the parent could then appeal the ruling and delay a final decision under the provisions of N.C. Gen. Stat. § 48-28 (1969).

This prolonged uncertainty could be prevented by providing an early judicial hearing on the validity of the natural parent's consent. North Carolina adoption laws should be amended to require that every agency or person to whom a child is surrendered for adoption must petition the district court within thirty days after such surrender to declare that the surrender is valid and to issue an order terminating the natural parent's rights to the child. The following is the suggested bill to bring about such a change:

A BILL TO BE ENTITLED AN ACT TO AMEND G.S. § 7A-288, RELATING TO TERMINATION OF PARENTAL RIGHTS; AND TO AMEND G.S. § 48-9(a)(1), RELATING TO CONSENT TO ADOPT.

The General Assembly of North Carolina enacts:

G.S. § 7A-288 is hereby amended by adding the following language:

"In any case where a parent surrenders a child for adoption to any person or agency, the following procedure shall be used to terminate parental rights:

(1) Within thirty (30) days after such surrender the person or agency to whom the child is surrendered shall petition the district court of the place of surrender to declare the surrender valid and to permanently terminate the parental rights to the child.

(2) The parent must be made a party to the proceeding and must be served with process.

(3) If the court finds the surrender to have been freely made, it shall enter an order permanently terminating the parental rights and placing temporary custody with the petitioner.

(4) The parent may appeal the district court order, but the question of validity of surrender shall be *res judicata* in all other adoption proceedings."

G.S. § 48-9 (a) (1) is hereby amended to read as follows:

"All parental rights relative to adoption must be terminated under the provisions of G.S. § 7A-288."

This requirement would assure the natural parent an early judicial hearing on the validity of consent, and it would give the agency or person having the child a clearer indication of whether the adoption can proceed without the chance of later reversal. Strangely enough, the New York statutes provide a procedure similar to this, but it is not mandatory. Had it been followed in the *Scarpetta* case there would not have been the serious problem that resulted.

When the termination of parental rights is looked upon as a most serious legal act, it becomes obvious that such a decision should be supervised by a court and not left to methods that raise serious questions of involuntary surrender and cast upon the whole adoption process a gripping fear of uncertainty. The proposed amendments should help eliminate many of the present legal difficulties that trouble the adoption process.

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1. North Carolina General Statutes, Chapters 7A & 48.
2. N.C. Index 2d *Adoptions* § 2 (1967).
3. 2 Am. Jur.2d *Adoptions* § § 46, 47 (1962).
4. *People ex rel. Scarpetta v. Spence-Chapin Adoption Service,* 28 N.Y.2d 185, 321 N.Y.S.2d 65, 269, N.E. 2d 787 (1971).
5. N.Y. Social Service Laws § 384 (McKinney 1971).

Larry Bowman

ALUMNI NEWS

WAKE FOREST ALUMNI ON THE HIGH COURTS

Justice I. Beverly Lake

I. Beverly Lake, distinguished Associate Justice of the state Supreme Court, has contributed greatly to the history of Wake Forest Law School and North Carolina.

His life and education were closely tied with the Wake Forest community and Wake Forest College. He was born in Wake Forest in 1906 and received a B.S. degree with majors in math and physics from Wake Forest College in 1925. He began his law studies with one year at Wake Forest Law School and then entered Harvard Law School. Due to lack of accreditation of Wake Forest, Dr. Lake began anew at Harvard, completing requirements for his LL.B. degree in 1929. Later he received his LL.M. degree in 1940 and his S.J.D. degree in 1947 from Columbia University.

Upon graduation from Harvard he entered practice with Willis Smith, Jr. and Colonel W.T. Joiner in the neighboring city of Raleigh and remained in general civil practice until 1932. At this time he became the fourth member on the faculty of Wake Forest Law School and would continue to teach for eighteen years. These years included the consolidation of the law schools of Wake Forest and Duke during World War II. Upon termination of the war and return to the Wake Forest campus, Dr. Lake would serve as acting dean.

While teaching, Dr. Lake was called away twice for public service during World War II. He served with the Legal Department of the Office of Price Administration in Washington, D.C. which drafted sugar rationing regulations. Later he rejoined the Office of Price Administration in the capacity of district rationing attorney and then district rationing executive in Raleigh, N.C. As rationing attorney he rendered assistance and decided appeals from the rationing boards of the Eastern district composed of fifty-four counties. At the end of the war he returned to teach at Wake Forest Law School until 1951 when during the Korean conflict he served on the staff of General Counsel of National Production.

In 1952, he accepted the position of Assistant Attorney General, now known as Deputy Attorney General. Some of his duties as counsel for the Revenue Department, Motor Vehicles Department, and Utilities Commission are now handled through the Consumer Division of the Attorney General's office by his son, I. Beverly Lake Jr.

In 1955 he returned to private practice in Raleigh, North Carolina until 1965 when he became Associate Justice of the Supreme Court of North Carolina. Before the formation of the Court of Appeals, the Supreme Court had the heaviest case load of any court in the United States. Dr. Lake stated that each justice now writes about thirty-five opinions a year as compared to the previous load of seventy-eight opinions.

Even with such a pressing schedule, Dr. Lake still enjoys time with his three grandchildren, his Irish setter dog, and his hobby of golf. He is married to the former Gertrude Bell of Raleigh, North Carolina and resides in Wake Forest, North Carolina.

Justice Joseph Branch

Associate Justice Joseph Branch is the only Wake Forest Law School graduate on the North Carolina Supreme Court. Justice Branch was appointed by Governor Dan K. Moore as Associate Justice of the North Carolina Supreme Court on July 21, 1966, and served on the court under this appointment until the 1966 General Election. He was elected to complete the unexpired portion of the term of the former Associate Justice Clifton L. Moore, and in the 1968 General Election he was elected to a full eight-year term.

In discussing the work of the North Carolina Supreme Court, Justice Branch said that the case load of this court is varied. In addition to criminal cases involving life imprisonment and death, the highest state tribunal also attempts to take those cases in which there is a substantial constitutional question, or a point which the Supreme Court will eventually need to hear and determine. Justice Branch considers one strong asset of the Court to be its "seven-man opinion" where each justice studies the case. All seven of the justices consider the records and after conclusion of arguments and submission of briefs, one of the justices is assigned to write the opinion.

Justice Branch attended Wake Forest College and received his LL.B. degree from Wake Forest Law School in 1938. While attending the law school he studied Corporations and Negotiable Instruments under Justice I. Beverly Lake. Before his appointment to the Supreme Court of North Carolina he practiced law, was a member of the Halifax County Bar Association, and was very active in politics. He was a Representative in the North Carolina General Assembly for the 1947, 1949, 1951, and 1953 terms. Justice Branch served as Legislative Counsel for Governor Luther Hodges in 1957 and for Governor Moore in the 1965 Session of the General Assembly. He was also campaign manager for Governor Dan K. Moore in 1964. He was chairman of the Democratic Party for his native Halifax County from 1957 until 1963, and a delegate from North Carolina to the National Democratic Convention in 1956.

Justice Branch is a member of the Masonic Order and was president of the Enfield Lions Club in 1941. While living in his hometown of Enfield, he was Deacon of Enfield Baptist Church and taught Sunday School for twenty--five years. He has been a member of the Board of Trustees for Wake Forest University for many years, serving as Chairman for two years. He was also on the Board of Trustees for Wesleyan College in Rocky Mount for one year.

In 1946 Justice Branch married the former Frances Jane Kitchen. They are members of Hayes Barton Baptist Church in Raleigh and have two children, Frances Jane Burns and James C. Branch. James is presently a junior at Wake Forest University. They also have a grandson and a granddaughter.

Wake Forest is proud to have one of its graduates serving on the Supreme Court of North Carolina.

Judge Raymond B. Mallard

Wake Forest School of Law is proud to claim Chief Judge Raymond B. Mallard of the North Carolina Court of Appeals as one of its distinguished alumni.

Judge Mallard attended Wake Forest College from 1924 until 1926. He entered Wake Forest Law School in 1930 and received his license to practice law in North Carolina in 1931. Immediately upon receiving his license he began to practice law in Tabor City, North Carolina and practiced for over twenty-four years, until 1955. He then became a Superior Court Judge, serving from 1955 until 1967, a total of twelve years and seven days. Judge Mallard said that serving on the Superior Court "is the most challenging job that any man or woman can have in North Carolina". His longest trial during his term on the Superior Court lasted seven weeks. Judge Mallard sits on the North Carolina Court of Appeals under gubernatorial appointment by Governor Dan K. Moore and since November 20, 1969 has served as Chief Judge of this tribunal.

The *Jurist* interviewed Judge Mallard and was interested in his comments on the judicial system in North Carolina. One of the main points of discussion was the slowness of the court system. Judge Mallard said that the system functions as quickly as can be expected. However, he did make the suggestion that in criminal cases solicitors need more assistance. He emphasized the importance of the North Carolina Court of Appeals by stating figures showing that in 1968, 466 cases were filed in the appellate court as compared to 767 cases filed in the same tribunal in 1971. Judge Mallard commented that to achieve a better judicial system for North Carolina, there was a need for improvement of the human beings that occupy judicial offices. Expeditious trials are extremely important to the efficiency of this system. He suggested that there needs to be finality to the trial of both criminal and civil cases, some point of time after which there are no further matters to litigate. This should be accomplished as soon as possible after the crime is committed, said Judge Mallard.

Besides his contributions to the legal profession through his work on the Court of Appeals, Judge Mallard has given his time to extra-curricular positions. He was vice-president of the North Carolina Bar Association of the 1966-1967 and 1968-1969 terms and Chairman of the Conference of Superior Court Judges for 1966-1967. Two years ago Judge Mallard received the Judge John J. Parker Memorial Award presented by the North Carolina Bar Association. This award is given to a member of the North Carolina Bar for distinguished service in the legal field.

His civic activities are as numerous as his professional ones. Judge Mallard served in the North Carolina General Assembly in 1939. He is a Thirty-second Degree Mason, past president of the Rotary Club, and past post commander of the American Legion.

Judge Mallard is married to the former Lula McDougan. He also has one daughter and two granddaughters and declared jokingly, "I'm a hen-pecked man!" His favorite hobby is golf.

Judge David Maxwell Britt

Judge David M. Britt was appointed Judge of the North Carolina Court of Appeals by Governor Dan K. Moore in July 1967. He was elected for a six-year term in the 1968 General Election and is presently fulfilling this term. When asked if there were any particular legal experience that might be of the greatest benefit to one aspiring to be a judge, Judge Britt answered that a person would do well to have some experience in as many phases of general law as possible. This is true because as Judge Britt emphasized, the Court of Appeals decides cases from the entire legal spectrum, including criminal cases and domestic relations cases. Judge Britt thinks that the North Carolina Court of Appeals has considerably reduced the number of cases with which the North Carolina Supreme Court must deal and has enabled the Supreme Court to devote more time to really important cases.

Judge Britt attended Wake Forest College from 1933 to 1935, and Wake Forest Law School from 1935 to 1937. He practiced law and later became Solicitor for Fairmont Recorder's Court from 1940 to 1944.

Judge Britt was selected "Man of the Year" for Robeson County in 1957 and served as Representative from Robeson County in the General Assembly of the 1959, 1961, 1963, 1965, and 1967 terms. Due to his active political life, he was elected Speaker of the House of Representatives in 1967.

Judge Britt has given considerable time to civic contributions. He is a former member of the Board of Trustees of Southeastern General Hospital and served as President of this Board in 1958. He was President of the Wake Forest College Alumni Association from 1952-1953. Because of his continuing interest in education, he was Chairman of the Fairmont Board of Education from 1954-1958. He is a member of Phi Kappa Alpha National Society Fraternity and has been a Rotarian since 1938. Judge Britt is a Deacon in the Baptist Church and served as First Vice-President of the Baptist State Convention of North Carolina from 1967 to 1969.

Mrs. Britt is the former Louise Teague of Fairmont, North Carolina. The Britts have three married daughters, Nancy Britt Orcutt, Martha Neill Britt Greene, Mary Louise Britt Hayes, and a son, David Britt Jr.

Judge Britt is particularly proud of being the recipient of the Judge John J. Parker Memorial Award presented to him by the North Carolina Bar Association in 1966. He was also granted an honorary degree of Doctor of Laws by Wake Forest University in June 1969. He is an honorary initiate of Timberlake Chapter of Phi Alpha Delta National Legal Fraternity of Wake Forest Law School.

Our school is honored by the presence of Judge Britt on the North Carolina Court of Appeals.

EDITORS NOTE: Due to the special article, "Wake Forest Graduates On The High Courts," the class notes section has been omitted for this edition. We will resume publication of this section next fall.

A special questionnaire follows which we urge you to return so that we may continue to offer this section.

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Please Give Brief Account Below Of Personal Items Of Current Intrest: (Recently Married, Birth Of A Child, Current Professional Positions, Professional Plans In The Immediate Future, etc.)

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